

TIMOTHY C. FOX
Montana Attorney General
JON BENNION
Deputy Attorney General
DALE SCHOWENGERDT
Solicitor General
MATTHEW T. COCHENOUR
Assistant Attorney General
215 North Sanders
P.O. Box 201401
Helena, MT 59620-1401
Phone: 406-444-2026
Fax: 406-444-3549
jonbennion@mt.gov
dales@mt.gov
mcochenour2@mt.gov

COUNSEL FOR INTERVENOR

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

<p>TANYA GERSH,</p> <p>Plaintiff,</p> <p>v.</p> <p>ANDREW ANGLIN,</p> <p>Defendant.</p>	<p>Case No. CV 17-50-M-DLC-JCL</p> <p>NOTICE</p>
---	---

United States Magistrate Judge Jeremiah C. Lynch recently
entered findings and recommendations recommending that

Andrew Anglin's motion to dismiss be denied. Doc. 85. Anglin argued that Mont. Code Ann. § 27-1-1503(2), which is part of Montana's Anti-Intimidation Act, is unconstitutional. Judge Lynch declined to address Anglin's constitutional challenge, reasoning that it was premature because the time for the State to intervene had not expired and because "the record is not yet fully developed." Doc. 85 at 29.¹ Anglin has objected to Judge Lynch's recommendation. *See* Doc. 91.

In Anglin's objections, he represents that the State will be filing a "forthcoming brief" and that his motion to dismiss is "pending a response" from the State. *See* Doc. 91 at 2 n.1, 22.² It appears, however, that the motion to dismiss is no longer a live motion in front of Magistrate Judge Lynch. Thus, unless the Court directs otherwise, the State does not intend to file a brief at this juncture. Anglin's challenge, in part, is an as-applied challenge, and, as Judge Lynch observed, the record is not yet developed. Moreover, it is possible that the United States District Court may agree with some or all of Anglin's

¹ The State has intervened for the limited purpose of defending the constitutionality of Mont. Code Ann. § 27-1-1503(2) and is now a party to this case. Doc. 90.

² Page references correspond to Anglin's brief's page numbers, not ECF pagination.

objections. Regardless, at this point, the State's view is that a brief would be premature and that resolution of the statute's constitutionality is better suited for summary judgment motions. Of course, the State will act in accord with any order from this Court, but absent a court order, the State does not intend to file a brief at this time.

Respectfully submitted this 23rd day of May, 2018.

TIMOTHY C. FOX
Montana Attorney General
215 North Sanders
P.O. Box 201401
Helena, MT 59620-1401

By: /s/ Matthew T. Cochenour
MATTHEW T. COCHENOUR
Assistant Attorney General
Counsel for Intervenor

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document with the clerk of the court for the United States District Court for the District of Montana, using cm/ecf system. Participants in the case who are registered cm/ecf users will be served by the cm/ecf system.

DATED: May 23, 2018

By: /s/ Matthew T. Cochenour
Matthew T. Cochenour
Assistant Attorney General